

STATE OF NORTH CAROLINA
COUNTY OF UNION

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EHR 06982

XMC FILMS, INCORPORATED)
BARRY EDWARDS,)
Petitioner,)
v.)
HAZARDOUS WASTE SECTION,)
N.C. DEPARTMENT OF ENVIRONMENT)
AND NATURAL RESOURCES,)
Respondent.)

**SETTLEMENT
AGREEMENT**

The North Carolina Department of Environmental Quality,¹ Division of Waste Management, Hazardous Waste Section (“the Section”) and XMC Films, Incorporated, Barry Edwards (“XMC Films”) enter into this Settlement Agreement in order to amicably resolve matters in controversy between them fully and finally. The Section and XMC Films shall be referred to collectively herein as “the Parties.”

The instant matter arose out of the issuance of a Short-Form Compliance Order with Administrative Penalty in Docket No. 2015-036 (“the Order”), by the Section against XMC Films on August 20, 2015, for alleged violations of the laws and rules governing the management of hazardous waste, as contained in Article 9 of Chapter 130A of the North Carolina General Statutes, and the rules promulgated thereunder and codified in Subchapter 13A of Title 15A of the North Carolina Administrative Code (collectively “the State Hazardous Waste Program”).

¹ The North Carolina Department of Environment and Natural Resources has been renamed the Department of Environmental Quality effective September 18, 2015.

The Parties participated in informal settlement discussions over the course of several months.

Based on information presented as a result of those discussions, and in order to avoid the cost and delay of litigation, the Section and XMC Films have reached the following agreement:

1. This Settlement Agreement is a negotiated compromise between the Parties. Neither this Settlement Agreement nor any action on the part of the Parties hereto shall be deemed an admission of liability with regard to the alleged violations of the State Hazardous Waste Program cited in the Order, incorporated herein by reference.
2. XMC Films shall pay to the Section a recomputed penalty in the amount of seven thousand, eight hundred and forty-five dollars (\$7,845.00) in settlement of the administrative penalty assessed in the Order. The Section agrees to accept the payment of the recomputed penalty in complete satisfaction of the original penalty assessed in the Order, subject to the terms of this Settlement Agreement. XMC Films shall pay the recomputed penalty in two installments as follows:
 - a. XMC Films will pay a first installment in the amount of three thousand nine hundred twenty-two dollars and fifty cents (\$3,922.50) on or before September 1, 2016; and
 - b. XMC Films will pay a second installment in the amount of three thousand nine hundred twenty-two dollars and fifty cents (\$3,922.50) on or before October 1, 2016.

Default on any payment, defined as sixty (60) days in arrears on any payment, shall render the entire \$7,845.00 penalty due and payable immediately.

3. In accordance with N.C.G.S. § 130A-22(j), and as outlined in Paragraph 13 of the “Conditions for Continued Operation” section of the Order, the Section also assessed investigative and inspection costs to XMC Films totaling one thousand thirty-two dollars and eleven cents (\$1,032.11). XMC Films shall pay these costs to the Section in one installment within thirty (30) days of the execution of this Settlement Agreement.
4. The payments required under Paragraphs 2 and 3 of this Settlement Agreement shall be made by separate certified checks or money orders, one for each of the installments of the recomputed penalty and one for the investigative and inspection costs, payable to the Division of Waste Management, and mailed to Julie S. Woosley, Chief, Hazardous Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646.
5. XMC Films expressly waives its right to an administrative hearing on the Order. Within ten (10) days of the full execution of this Settlement Agreement, XMC Films shall file with the Office of Administrative Hearings a Notice of Dismissal with Prejudice, withdrawing its Petition for a Contested Case Hearing in *XMC Films, Incorporated, Barry Edwards. v. Hazardous Waste Section, N.C. Department of Environment and Natural Resources*, 15 EHR 06982.
6. XMC Films expressly stipulates and acknowledges that, by entering into this Settlement Agreement, it waives for purposes of collection of the above-described recomputed penalty, fees, and costs any and all defenses to the underlying assessment of said penalty, fees, and costs, and that the issue in any action to collect the penalty, fees, or costs will be limited to the payment or non-payment thereof in accordance with the terms of this Settlement

Agreement.

7. Nothing in this Settlement Agreement shall restrict the right of the Section to inspect XMC Films and take enforcement action against XMC Films for any new, subsequent or repeat violations of the State Hazardous Waste Program. It is further understood that XMC Films may contest any subsequent enforcement action based on allegations of new, subsequent or repeat violations, to the extent such right is provided in Chapter 130A of the North Carolina General Statutes.
8. XMC Films and the Section agree that each shall bear its own costs related to any disputes covered by this Settlement Agreement. Neither XMC Films nor the Section shall apply for attorney fees or costs under any rule or law, and neither shall be liable for any attorney fees, costs, or expenses incurred by the other, except as otherwise provided in this Settlement Agreement.
9. XMC Films and the Section agree that the consideration for this settlement is in the promises contained herein, that this Settlement Agreement contains the whole agreement between them, and that there are no understandings or agreements, verbal or otherwise, regarding this Settlement Agreement except as expressly set forth herein.
10. This Settlement Agreement is contractual in nature and not just a recitation of terms. The language of this Settlement Agreement shall be construed, enforced, and governed by the laws of the State of North Carolina.
11. Each provision of this Settlement Agreement is intended to be severable, and if any provision is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall not affect or impair any other provision of this Settlement Agreement, but this Settlement Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained therein.

12. This Settlement Agreement shall be binding upon and inure to the benefit of the assigns, heirs, executors, and administrators of XMC Films and to the Section, its officials, managers, employees, assigns, predecessors, and successors.
13. This Agreement shall be binding upon the Parties upon execution by the undersigned. The Agreement becomes effective on the last date of the signatures of the undersigned.
14. The corporate officer signing on behalf of XMC Films hereby warrants that he is competent to enter into this Settlement Agreement, that he has authority to enter into this Settlement Agreement on behalf of XMC Films, and that no court or tribunal of competent jurisdiction has found him to be incompetent or otherwise incapable of handling his business affairs or entering into a binding agreement or contract.
15. This Agreement was prepared by Special Deputy Attorney General Daniel S. Hirschman, counsel for the Section. As counsel for the Section, Mr. Hirschman has not and cannot provide legal advice to XMC Films, who is unrepresented in this matter. The undersigned representative of XMC Films hereby acknowledges that he has read this Agreement, fully understands the contents of the Agreement, and consents to the terms of the Agreement in reliance upon his own judgment and not in reliance on any other representations or promises of the Section, its representatives, or its attorneys.

THE PARTIES ACKNOWLEDGE THAT EACH HAS CAREFULLY READ THIS ENTIRE AGREEMENT AND FULLY UNDERSTANDS ITS CONTENTS AND ITS LEGAL AND BINDING EFFECT. EACH PARTY FURTHER ACKNOWLEDGES THAT EACH MAKES A KNOWING AND VOLUNTARY WAIVER OF THEIR RIGHTS IN EXCHANGE FOR THE CONSIDERATION SPECIFIED IN THIS AGREEMENT.

IN WITNESS WHEREOF, this Settlement Agreement is executed in duplicate originals:

FOR THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES:

Julie S. Woosley
Julie S. Woosley
Chief, Hazardous Waste Section
Division of Waste Management

9-8-16
Date

NORTH CAROLINA
County of WAKE

I, Kathleen Lance, a Notary Public for said County and State, do hereby certify that Julie S. Woosley personally appeared before me this day, is personally known to me or provided official identification in the form of drivers license, and acknowledged the due execution of the foregoing instrument.

Witness my hand official seal, this the 8 day of September, 2016.

Kathleen Lance

Notary Public

(Official Seal)



My Commission expires: January 26, 2019

FOR XMC FILMS, INCORPORATED:

Barry D. Edwards
Barry Edwards
CEO/President
XMC Films, Incorporated

8-22-16
Date

State of Georgia
County of Gwinnett

I, Dione Lockridge, a Notary Public for said County and State, do hereby certify that Barry D. Edwards personally appeared before me this day, is personally known to me or provided official identification in the form of drivers license, and acknowledged the due execution of the foregoing instrument.

Witness my hand official seal, this the 22 day of August, 2016.

Dione Lockridge

Notary Public



8/11/2020